IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 3303 OF 1999

YADAV GANPAT BHAMARE)
residing at Bhausaheb Hiray)
Housing Society, Hirawadi,)
Panchwati, Nashik-3.) .. PETITIONER

Versus

1. THE STATE OF MAHARASHTRA)
through the Secretary Tribal)
Development Department,)
Mantralaya, Mumbai.)

2. THE COMMISSIONER,)
Tribal Development Division)
Nashik, District Nashik)

3. EDUCATION OFFICER (Secondary)
Zilla Pkarishad, Nashik) .. RESPONDENTS

Mr. R. G. Ketkar for petitioner
Mr. Vinay Sonpal, AGP

CORAM:-SMT. RANJANA DESAI &
A.P. DESHPANDE, JJ.

THE DATE ON WHICH THE JUDGMENT
IS RESERVED 26th July, 2006
THE DATE ON WHICH THE JUDGMENT
IS PRONOUNCED 14th August,2006

JUDGMENT:-(Per Smt. Ranjana Desai, J.)

. In this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a direction to the respondents to sanction and reimburse medical expenditure bills to the tune of Rs.1,53,000/- incurred by the petitioner for undergoing Angiography on 23/12/97 and By-pass surgery operation on 31/12/97 in Poona Medical Foundations, Ruby Hall Clinic.

2. It is necessary to give a gist of the facts as stated in the petition. The petitioner had obtained degree in B.Sc. (Agri.) and B. Ed. He was appointed as Asstt. Teacher with effect from

12/6/72 in K. B. High School Chinchwad, Taluka Peth, District Nashik. He was transferred as Headmaster in Post Basic Ashram School (Secondary) Chinchwad, Taluka Peth by order dated 15/7/72. According to the petitioner the said school is receiving grant of the 1st respondent State of Maharashtra.

3. It is the case of the petitioner that he discharged his duties as Headmaster in Chinchwad school upto 1979 and thereafter he was transferred as Headmaster to Post Basic Ashram School Manur, Taluka Kalwant, District Nashik where he worked till 1987. The petitioner was thereafter transferred to Post Basic Ashram School at Pandane Taluka Dindori, District Nashik.

4. The petition is filed in May, 1999. It is stated in the petition that the petitioner was due to retire on 28th December, 2000. The petitioner has obviously retired from service by now.

5. According to the petitioner he was advised to undergo Angiography and accordingly on 23/12/97 he underwent Angiography in Poona Medical Foundations, Ruby Hall Clinic and the petitioner was operated

for By-pass surgery at the same hospital on 31/12/97. The petitioner was discharged from the said hospital on 16/1/98. He was advised bed rest till the end of April, 1998. The petitioner incurred expenditure to the tune of Rs.1,53,000/- towards Angiography and By-pass surgery.

6. According to the petitioner in the meantime the school committee of Post Basic Ashram School Pandane passed a Resolution on 28/12/97 recommending the submission of the petitioner's medical bills to the tune of Rs.1,20,000/- to the State Government for sanction.

7. From the annexures to the petition it is evident that letter dated 5th January, 1998 was sent by the Principal of the Post Basic Ashram School Pandane to the Project Officer Ekatmik Adivasi Vikas Prakalp Nashik requesting payment towards medical expenses of the petitioner. The said officer by his letter dated 6/1/98 forwarded a copy of letter dated 18/3/96 of Additional Commissioner Tribal Division, Nashik, to the effect that the employees of aided Ashram School /Post Basic Ashram Schools are not entitled to reimbursement of medical expenditure bills. It

was, however, conveyed to the Principal that the petitioner's proposal was under consideration.

8. Another letter dated 18/3/96 was also enclosed to the said letter dated 6/1/98. It was addressed on behalf of Adivasi Vikas Nashik to Project Officer Nashik stating that Government Resolution dated 12/3/89 does not cover Ashram schools of Tribal Development Department and, therefore, the employees of Ashram Schools/Post Basic Ashram Schools are not entitled to reimbursement of medical expenditure bills.

9. The petitioner then made a representation dated 30/4/98 to the Secretary Tribal Development Department, Government of Maharashtra, requesting for reimbursement of medical expenses. The petitioner has addressed several letters to various authorities requesting for reimbursement. However, the said authorities have not responded to the petitioner's letters. The petitioner has, therefore, approached this court.

10. We have heard Mr. Ketkar, the learned counsel appearing for the petitioner at some length. Mr. Ketkar contended that there is no distinction

between the employees of the Ashram Schools/Post Basic Ashram Schools and employees of Secondary Schools. He submitted that both are governed by the same terms and conditions and in fact their services are transferable inter se. He pointed out that in the year 1993, the petitioner's medical bills were reimbursed as a special case. He submitted that there is no reason for the authorities to now contend that the petitioner being an employee of Post Basic Ashram School is not entitled to reimbursement. He pointed out that employees of Post Basic Ashram School are entitled to dearness allowance as is admissible to the Secondary School staff and the same pension scheme is applicable to the employees of Ashram Schools and the Secondary Schools.

11. Mr. Ketkar placing reliance on the Government Resolution dated 21/5/89 has pointed out that clause 2 of the said resolution extends all the benefits enjoyed there-before by the State Government employees, Zilla Parishad employees, Senior College and University employees, in regard to the availing of medical treatment in Government Hospitals and Hospitals recognized / approved by the State Government so also the benefit of

reimbursement of medical expenses, to the employees working in the recognized and aided primary schools, secondary and higher secondary schools, colleges of education, schools imparting technical education, administered by Private Managements. The benefits and medical facilities are extended with effect from the date of the G.R. viz. Government Resolution dated 21/5/89. It is then contended that the petitioner is admittedly a teacher working in a post basic ashram school which has been held to be a Private School (secondary school), by this court, to which the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("M.E.P.S. Act" for short) apply. If this is the position, then the petitioner is entitled to all the benefits extended by Government Resolution dated 21/5/89.

12. Elaborating the submission, in the first place it is canvassed that employees working in post basic ashram school are very much covered by the Government Resolution dated 21/5/89 and hence the petitioner is entitled to the facilities of medical treatment and reimbursement. It is alternatively submited that if it is held that the petitioner is

not entitled to the benefit extended by the said Government Resolution dated 21/5/89, then the Government Resolution to the extent it excludes the employees of Post Basic Ashram School, is bad in law, being in violation of the equality clause enshrined in Article 14 of the Constitution of India. It is submitted that there is no intelligible differentia between the class which has been extended the benefit and the class which is sought to be excluded from the benefits. It is pointed out that all the service conditions which are applicable to employees working in privat schools administered by private managements are applicable to the employees working in Post Basic Ashram Schools and hence denial of one of the service conditions, which is dealt with by Government Resolution dated 21/5/89 in regard to extending the benefits of medical treatment and reimbursement of medical expenses would violate Article 14 of the Constitution of India. He submits that the rules uniformly regulate all other service conditions including qualifications for appointment, pay scale and allowances, mode of payment of salary, seniority, leave and vacation, age of superannuation, work load, duties and code of conduct so also the provision in regard to

pension of the employees of the Private Schools which includes the employees working in a Post Basic Ashram School. It is thus contended that there is no reason to exclude the employees of Post Basic Ashram School from the facility of medical treatment and medical reimbursement.

13. Lastly it is submitted that there is no rational nexus with the object sought to be achieved by the Government Resolution dated 21/5/1989 in denying medical treatment and medical reimbursement to the employees of the Post Basic Ashram Schools. It is submitted that if the Government Resolution dated 21/5/89 is read so as to exclude its applicability to the emplloyees working in Post Basic Ashram School the said exclusion will be bad in law and violative of Article 14 of the Constitution of India.

14. Mr. Ketkar drew our attention to Government Resolution dated 28/9/99 which inter alia states that the Government has now decided to make medical facilities which are available to teaching and non-teaching employees of recognised and aided Private, Primary, Secondary and Higher Secondary Schools available to recognised aided Ashram

schools and Post Basic Ashram School's full time teaching and non-teaching employees prospectively i.e. from the date of the said resolution. Mr. Ketkar contended that there is absolutely no reason to make the said benefit prospective when Post Basic Ashram Schools have always been on par with the other schools mentioned in the said resolution. Denying the said benefit to the petitioner, argues Mr. Ketkar, is arbitrary and discriminatory.

15. Mr. Ketkar contended that the Full Bench decision of this court in **Suryakant Sheshrao Panchal v. Vasantrao Naik Vimukta Jati, Bhatakya Jamati Aadarsh Prasarak Mandal & Ors., 2002 (3) M.L.J. 659** and the Division Bench decision of this court in **Murlidhar Narayan Nangare vs. State of Maharashtra & Ors., 2003 (1) M.L.J. 992** put any doubts about the petitioner's entitlement to rest.

16. The learned AGP Shri Sonpal on the other hand took us to the affidavit of Shri Gopal Tungar, Under Secretary Tribal Development Department and contended that Post Basic Ashram Schools and the Secondary Schools are governed by different rules. Ashram schools are under the Tribal Development department whereas Secondary Schools are under the

Education Department. He submitted that Resolution dated 12/5/89 is passed by the Education Department and it does not extend the benefit of the medical reimbursement to the teaching and non-teaching employees of the Adivasi Ashram Schools receiving grant-in-aid from the Tribal Department. He submitted that in the circumstances the petitioner is not entitled to medical reimbursement.

17. As the legislature thought it expedient to regulate the recruitment and conditions of service of the employees working in certain private schools in the State it enacted the M.E.P.S. Act with a view to providing such employees security and stability of service to enable them to discharge their duties towards the pupils and their guardian in particular and the institution and society in general, effectively and efficiently.

18. Section 3(1) lays down that the provisions of this M.E.P.S. Act shall apply to private schools in the State of Maharashtra whether receiving grant in aid from the State Government or not. Sub section (2) 20 defines private school thus;

"Private School means a recognized school

established or administered by a Management other than the Government or a local authority".

19. In **Suryakant Panchal v. Vasantrao Naik Vimukta Jati Bhatkya Jamati Adarsh Prasarak Mandal & Ors., 2002 (3) MLJ 659**, a Full Bench of this court was considering whether the employees of Ashram Schools have remedy of appeal under Section 9 of the M.E.P.S. Act. The Full Bench traced the history of the Ashram Schools. It was observed that the State Government came out with the policy of encouraging Ashram Schools to be started by the private management as fully aided primary schools with the permission either of the Deputy Director of Social Welfare or the Deputy Director of Tribal Development as the case may be. The Full Bench noted that looking to the growing needs of education beyond primary level, the State Government revised its policy and allowed Post Basic Ashram Schools to be started by the private managements as aided schools. The full Bench quoted the definition of the term 'recognised' as found in Section 2(21) of the MEPS Act which states that 'recognised' means recognised by the Director, the Divisional Board or the State Board or by any officer authorised by him or by any such Boards.

The Full Bench observed that an Ashram School running classes from 1st to 10th Standard would requires recognition from any of the authorities as specified in Section 2(21) of the MEPS Act and would fall within the ambit of the term "private school" as defined in section 2(2) of the MEPS Act.

20. We must also refer to **Murlidharan's case (supra)**. In that case the petitioner had worked in Abhinava Kala Mahavidyalaya. It was an art school. It was a private but aided institution. This court found that the said school was covered by the definition of "school" as found in section 2(24) of the MEPS Act. The question was whether pensionary benefits available to any aided private school, should be made available to the employees of the said school. This court held that all benefits which are otherwise available to employees, who had served in any aided private school, must also be made available to employees of the said school.

21. In our opinion, in the present case also once it is held that the Post Basic Ashram School is an aided private school covered by the MEPS Act, all benefits which are otherwise available to teaching and non-teaching staff of recognised, aided private

schools must be made available to the employees of Post Basic Ashram School. On a plain reading of the Government Resolution dated 21/5/89 it is clear that the facilities and benefits extended thereunder are in fact extended to the members of teaching and non-teaching staff working in private schools, recognized and admitted to grants, from the state exchequer. As the Full Bench judgment holds that the employees working in Post Basic Ashram School are covered by the definition of private school the petitioner is very much entitled to the benefits / facilities extended by the Government Resolution dated 21/5/89.

22. In fact number of resolutions issued by the Government of Maharashtra indicate that it has always treated Post Basic Ashram Schools on par with other aided schools. In this connection, it is necessary to note that Education Department of the Government of Maharashtra vide its letter dated 9/12/74 bearing No. ASC-2174-100025 issued a clarification that dearness allowance admissible to teachers employed in Secondary Schools is also admissible on par to teachers employed in Post Basic Ashram Schools.

23. It is also necessary to note that the Government of Maharashtra issued a Resolution on 14/2/78 clarifying that the sanctioned pension scheme should be made applicable to the teaching and non-teaching staff of the Post Basic Ashram Schools with immediate effect by passing a resolution. Accordingly with the concurrence of the Education Department and the Finance Department, the Zonal Welfare, Cultural Affairs, Sports and Tourism Department of the Govt. of Maharashtra issued a Resolution dated 19/1/2/77 bearing No. 2370/EXP-5 to that effect.

24. Demand of employees of Post Basic Ashram Schools that their salaries should be paid through the Bank as in the case of non-aided Secondary Schools was conceded by the Government by passing a resolution dated 23/4/79 to the effect that the scheme of payment of salary through the Bank as sanctioned under the Government Resolution, Education Department No.SSW/1867/76142-G dated 29/5/73 should be made applicable to the teaching and non-teaching staff of aided Post Basic Ashram Schools with effect from 1/6/79.

25. The payscales recommended by Bhole Commission was made applicable to teaching and non-teaching staff in all the schools of the State Government. However, the teaching and non-teaching staff of aided Post Basic Ashram Schools was given its benefit from 1/6/79. It appears that grievance made by them was upheld by this court. Government of Maharashtra then issued resolution dated 1/12/87 making the pay scale applicable to them with effect from 1/6/76.

26. In accordance with the provisions of the Maharashtra Civil Services (Medical Case) Rules 1961, the Government of Maharashtra passed a resolution on 21/5/89 to the effect that facilities of reimbursement of medical reimbursement should be made available to recognised and aided Private Primary Schools, Secondary, Higher Secondary Schools, Teaching Colleges and Technical Schools from the date of the resolution i.e. 21/5/89. When the petitioner underwent angiography on 23/1/2/97 and was operated upon for Bypass surgery on 31/12/97 the school committee of the Post Basic Ashram School at Pandane recommended the petitioner’s case for medical reimbursement and correspondence was made with the State Government

in that behalf. The State Government surprisingly took a stand that its resolution dated 21/5/89 does not cover Ashram Schools of Tribal Development Department and, therefore, employees of Ashram Schools/Post Basic Ashram School are not entitled to medical reimbursement.

27. We find this stand of the State Government totally untenable. We have already referred to the Full Bench decision of this court in **Suryakant Panchal's case (supra)** where the Full Bench has observed that the State Government has revised its policy and allowed Post Basic Ashram Schools to be started by private management as aided schools and they are covered by the definition of the term private school as found in Section 2(20) of the MEPS Act. Once Post Basic Ashram Schools are held to be private schools covered by the MEPS Act they would be covered by Government Resolution dated 12/5/89 which makes medical reimbursement available to teaching and non-teaching staff of recognised and aided private schools. Such a view is in tune with the Full Bench decision and also with the decision of this court in **Murlidhar's case (supra)**. It is also in tune with several government resolutions to which we have made reference

hereinabove. In the circumstances the petitioner cannot be denied medical reimbursement. We are informed that medical reimbursement is now made available to teaching and non-teaching staff of recognised aided Post Basic Ashram Schools from 28/9/99. We do not find any valid reason why persons like the petitioner who have suffered ailment prior to 28/9/99 should be denied the benefit of medical reimbursement, if for that ailment Medical reimbursement is allowed. The entire approach of the State Government is discriminatory. We, therefore, hold that teaching and non-teaching staff of Post Basic Ashram School is entitled to medical reimbursement. They are covered by the Government Resolution dated 12/5/89. The petitioner is, therefore, entitled to medical reimbursement.

28. We, therefore, direct the State Government to forthwith sanction and reimburse medical expenditure bills of the petitioner to the tune of Rs.1,53,000/- incurred by the petitioner for undergoing Angiography on 23/12/97 and Bypass Surgery operation on 31/12/97 in Poona Medical Foundations Ruby Hall Clinic.

29. The petition is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)

(A. P. DESHPANDE, J.)